

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s):	Karri OSARA et al.	Confirmation No.:	7912
Patent No.:	7,504,009	Group Art Unit:	1795
Serial No.:	10/533,798		
Filed:	May 4, 2005	Examiner:	Bell, Bruce F.
For:	METHOD FOR THE FORMATION OF A GOOD CONTACT SURFACE ON AN ALUMINIUM SUPPORT BAR AND SUPPORT BAR		

**REQUEST FOR RECONSIDERATION OF THE DECISION DISMISSING REQUEST  
FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT  
UNDER 37 C.F.R. § 1.705(d)**

Mail Stop **Petitions**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants hereby request reconsideration of the Decision Dismissing Request for Reconsideration of Patent Term Adjustment ("Decision") that was issued by the U.S. Patent and Trademark Office on July 22, 2009. The Decision was in response to applicants Petition for Reconsideration of the Determination of Patent Term Adjustment under 35 U.S.C. §154(b) for U.S. Patent No. 7,504,009 which was timely filed on May 11, 2009.

Applicants also submitted a Petition For Reconsideration Of Patent Term Adjustment Under 37 C.F.R. § 1.705(b) for this case on November 14, 2008. The Office responded with a decision on February 12, 2009, indicating that the decision was being held in abeyance until the patent issues.

Applicants submit herewith (1) a copy of the Office's Decision on the petition filed under 37 C.F.R. §1.705(d); (2) a copy of the Office's Decision on the petition filed under

37 C.F.R. §1.705(b) and (3) a statement of the facts. Applicants believe that no payment is required, since the statement of facts presented herein are substantially the same as those previously presented on May 11, 2009 and November 14, 2008.

### **STATEMENT OF FACTS**

On May 4, 2005, the application which issued as U.S. Patent No. 7,504,009 was filed in the U.S. Patent & Trademark Office (USPTO), thus qualifying for Patent Term Adjustment (PTA) under 35 U.S.C. §154. The instant application is not currently subject to a terminal disclaimer.

On March 17, 2009, the USPTO issued the above-referenced patent indicating that the Patent Term Adjustment Under 35 U.S.C. § 154(b) was **477** days.

Applicants have reviewed the prosecution history of the above-referenced application and confirm that the term calculation by the USPTO is 477 days according to **35 U.S.C. § 154(b)(1)(A)** (i.e., 506 days delayed by USPTO during prosecution – 29 days delayed by applicants). However, this term adjustment fails to consider the delay by the USPTO in issuing the patent within three years from the filing date **35 U.S.C. § 154(b)(1)(B)**.

In relevant part, 35 U.S.C. § 154 states (emphasis added):

(b)ADJUSTMENT OF PATENT TERM.—

(1)PATENT TERM GUARANTEES.—

(A)GUARANTEE OF PROMPT PATENT AND  
TRADEMARK OFFICE RESPONSES.—  
Subject to the limitations under paragraph (2),  
if the issue of an original patent is delayed due

to the failure of the Patent and Trademark Office to—

(i) provide at least one of the notifications under section 132 of this title or a notice of allowance under section 151 of this title **not later than 14 months after**—

(l) the date on which an application was filed under section 111(a) of this title; or

\* \* \*

(iv) **issue a patent within 4 months after the date on which the issue fee was paid** under section 151 and all outstanding requirements were satisfied, the term of the patent shall be extended 1 day for each day after the end of the period specified in clause (i), (ii), (iii), or (iv), as the case may be, until the action described in such clause is taken.

(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY.— Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the **failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date** of the application in the United States, not including—

\* \* \*

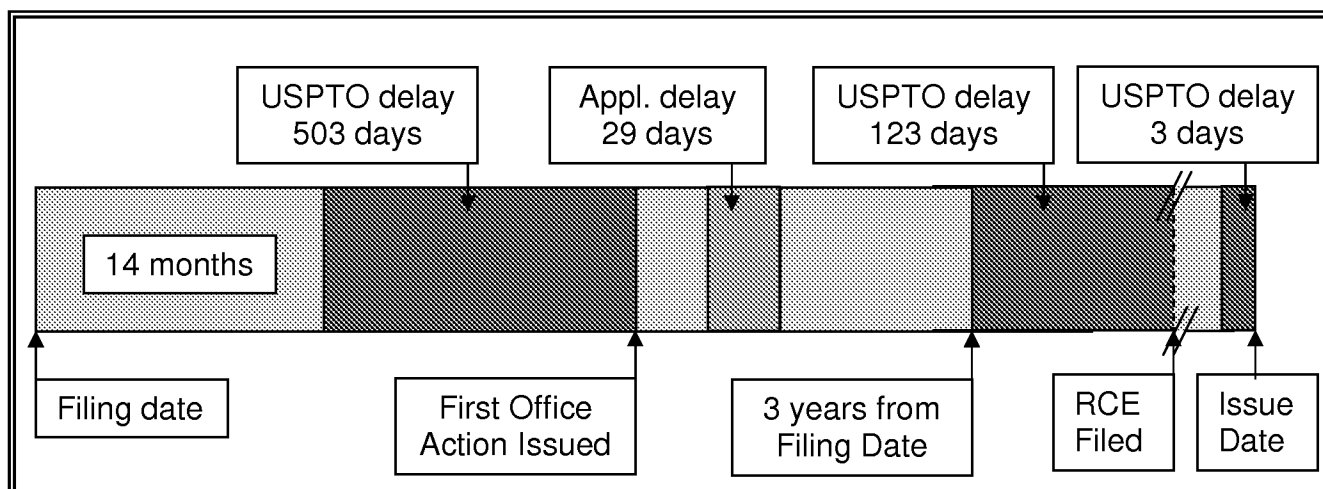
Applicants submit that the correct patent term calculation under 35 U.S.C.

§ 154 for the above-referenced patent is **600 days**. Applicants' calculation of PTA properly includes:

1. 506 days of delay by the USPTO during prosecution (503 days of delay in issuing the first Office Action within 14 months of the filing date and 3 days of delay in issuing the application within 4 months of paying the issue fee);
2. 123 days of delay by the USPTO in issuing the patent beyond 3-years-from-filing-date to the filing of a Request for Continued Examination (from May 4, 2008 to September 4, 2008); and

3. An adjustment of 29 days of delay by the applicant during prosecution.

As shown in the illustration below, the proper patent term adjustment calculated by applicants does not include any overlapping days or double counting of days. Any calendar day where there was a delay due to the USPTO is only counted one time. In other words, applicants did not include any days of delay during prosecution which may have overlapped with days of delay in issuing the patent beyond 3 years from the filing date. Therefore, based on the proper interpretation of 35 U.S.C. § 154, applicants are entitled to **600 days** of PTA (506 days + 123 days – 29 days).



Applicant's view is supported by recent case law interpreting 35 U.S.C. § 154. Wyeth, et al. v. Jon W. Dudas, 580 F. Supp. 2d. 138 (D.D.C. 2008). In Wyeth the federal District Court for the District of Columbia granted summary judgment in favor of Wyeth, determining that the U.S. Patent and Trademark Office had misconstrued 35 U.S.C. § 154(b)(2)(A). As a result, the Office had denied Wyeth a portion of patent term to which it was entitled under the law. Wyeth held, and the court agreed, that the proper PTA includes USPTO delays before the 3-years-from-filing date plus all delays between

the 3-years-from-filing date and the issue date, less applicant delays; and, that this would not constitute impermissible “double-counting” of delay periods.

The Decision issued by the USPTO on July 22, 2009 dismissed applicants petition. The Decision contends that applicants interpretation of the period of overlap is inconsistent with the Office’s interpretation (Decision, page 2). The Decision points to 35 U.S.C. 154 and 37 C.F.R. 1.702 to allegedly support the USPTO’s interpretation of the period of overlap. Applicants assert that the USPTO’s interpretation of the statute and related rule is incorrect and inconsistent with the District Court’s interpretation in the Wyeth case.

Furthermore, the USPTO improperly imports language into the statute to arrive at their interpretation. For example, the Decision states:

the Office interprets 35 U.S.C. 154(b)(2)(A) as permitting either patent term adjustment under 35 U.S.C. 154(b)(1)(A)(i)-(iv), or patent term adjustment under 35 U.S.C. 154(b)(1)(B), but not as permitting patent term adjustment under both 35 154(b)(1)(A)(i)-(iv) and 35 U.S.C. 154(b)(1)(B). (Decision, page 3) (emphasis added).

However, the statute does not provide any indication that the patent term should be calculated according to an “either... or” method. Importantly, the word “or” does not appear between sections 154(b)(1)(A) and 154(b)(1)(B). Furthermore, there is no other indication within the statute that explicitly or implicitly states that only one provision can be used in determining the patent term and that both provisions cannot be applied together. Therefore, there is nothing in the statute or related rule that precludes the application of both sections together.

Applicants respectfully assert that the USPTO's Determination of PTA has been improperly calculated and respectfully request adjustment of the 477 days of PTA to **600 days**. Therefore, applicants respectfully request (1) reconsideration of the Dismissing Request for Reconsideration of Patent Term Adjustment and (2) reconsideration of the Patent Term Adjustment to provide U.S. Patent No. 7,504,009 with the correct Patent Term Adjustment of 600 days.

### **CONCLUSION**

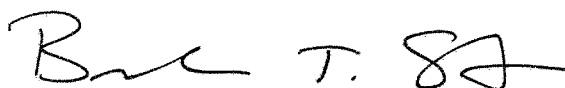
In considering the evidence as detailed in Image File Wrapper and Transaction History of the Patent Application Information Retrieval (PAIR) system, Applicants respectfully request reconsideration of the Dismissing Request for Reconsideration of Patent Term Adjustment and reconsideration of the Patent Term Adjustment and request that U.S. Patent No. 7,504,009 be accorded the correct Patent Term Adjustment of 600 days.

**AUTHORIZATION**

Applicants believe that no payment is required, since the statement of facts presented herein are substantially the same as those previously presented on November 14, 2009. However, in the event that the Commissioner requires payment for this submission, the Commissioner is hereby authorized to charge any fees which may be required for consideration of this Petition to Deposit Account No. **504827**, Order No. 1004350.123US.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. **504827**, Order No. 1004350.123US.

Respectfully submitted,  
Locke Lord Bissell & Liddell LLP



Dated: September 22, 2009

By: \_\_\_\_\_

Brandon T. Schurter  
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↑CUSTOMER NUMBER↑

Confirmation No.: 7912  
Date of Notice of Allowance: October 7, 2008  
Serial No.: 10/533,798  
Attorney Docket No.: 4819-4743

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s): Karri OSARA et al.                      Group Art Unit: 1795  
Examiner: Bell, Bruce F.  
Filed: May 4, 2005  
Customer No.: 27123  
For: METHOD FOR THE FORMATION OF A GOOD CONTACT SURFACE ON AN  
ALUMINIUM SUPPORT BAR AND SUPPORT BAR

Mail Stop Issue Fee  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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**STATEMENT REGARDING PATENT TERM ADJUSTMENT UNDER WYETH V. DUDAS**

Mail Stop Issue Fee  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants herein address the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) as set forth in the paper mailed to applicants with the Notice of Allowance on October 7, 2008. Specifically, applicants believe that the subject application is entitled to additional Patent Term Adjustment in view of the decision in *Wyeth v. Dudas*, No. 07-1492, 2008 U.S. Dist. LEXIS 76063 (D.D.C. 2008). Applicants set forth the bases for this belief below.

The court in *Wyeth* concluded that, under 35 U.S.C. § 154(b)(2)(A), periods of delay can only overlap if they occur on the same calendar day. Accordingly, applicants believe that the subject application is entitled to an additional 123 days of Patent Term Adjustment beyond the 474 days set forth on the October 7, 2008 Determination. These additional 123 days arise under 35 U.S.C. § 154(b)(1)(B) as the period of time beginning May 4, 2008 (*i.e.*, three years after the filing date) and ending on September 4, 2008 (*i.e.*, the filing of a Request for Continued Examination). Applicants note that this period of time does not overlap any calendar days from which the 474-day delay under 35 U.S.C. §



154(b)(1)(A) was calculated (*i.e.*, the 503-day delay in issuing a first notice under 35 U.S.C. § 132 occurring between July 4, 2006 and November 19, 2007, less applicants' own delay).

Applicants expressly reserve the right to request an additional 123 days of Patent Term Adjustment should *Wyeth* be upheld by the Court of Appeals for the Federal Circuit.

- ☒ The Commissioner is hereby authorized to charge any additional fees which may be required by this paper, or credit any overpayment to Deposit Account No. 13-4500, Order No. 4819-4743.

Respectfully submitted,  
MORGAN & FINNEGAN, L.L.P.

Dated: November 14, 2008

By: /Andrew D. Cohen/

Andrew D. Cohen

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MORGAN & FINNEGAN, L.L.P.  
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NEW YORK NY 10281-2101

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In re Application of	:	<b>OFFICE OF PETITIONS</b>
OSARA et al.	:	
Application No. 10/533,798	:	ON APPLICATION FOR
Filed: 05/04/2005	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 4819-4743	:	

This is in response to the "STATEMENT REGARDING PATENT TERM ADJUSTMENT UNDER WYETH V. DUDAS" filed November 14, 2008, which is properly being treated under the provisions of 37 CFR 1.705(b). Applicant requests that the determination of patent term adjustment be increased by 123 days to 597 days. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent and in light of the recent court decision in Wyeth v. Dudas, No. 07-1492 (D.D.C. September 30, 2008).

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date, a decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within three years. See 37 CFR 1.703(b). (This is true even in this instance where a request for continued examination (RCE) was filed. The computer will not undertake the § 1.703(b) calculation until the actual date of issuance of the patent has been determined. Accordingly, it is still too soon to make a determination as to the correctness of any period of adjustment that will or will not be entered pursuant to § 1.703(b)).

Applicant is given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within three years. A copy of this decision should accompany the request. Applicant may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Rather than file the request for reconsideration of Patent Term Adjustment at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term pursuant to 37 CFR 1.705(d). The USPTO notes that it does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent and accordingly, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent.

It is acknowledged that applicant is correct that any period of adjustment will be entered in light of 35 U.S.C. 154(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including -

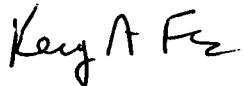
(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

It is noted that a Request for Continued Examination (RCE) was filed in this application on September 4, 2008.

The Office will charge the Deposit Account for the \$200.00 fee set forth in 37 CFR 1.18(e) as authorized. No additional fees are required.

The application is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney, Christina Tartera Donnell, at (571) 272-3211.



Kery A. Fries  
Senior Legal Advisor  
Office Patent Legal Administration



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MORGAN & FINNEGAN Transition Team  
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NEW YORK NY 10281-2101

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**JUL 22 2009**

**OFFICE OF PETITIONS**

In re Patent No. 7,504,009	:	
OSARA et al.	:	DECISION DISMISSING
Issue Date: March 17, 2009	:	REQUEST FOR
Application No. 10/533,798	:	RECONSIDERATION
Filed: May 4, 2005	:	OF PATENT TERM ADJUSTMENT
Atty. Docket No. 4819-4743	:	

This is in response to the PETITION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION UNDER 37 C.F.R. § 1.705(d) filed May 11, 2009. Patentees request that the determination of patent term adjustment be corrected from four hundred seventy-seven (477) days to six hundred (600) days.

The request for reconsideration of patent term adjustment is **DISMISSED** with respect to making any change in the patent term adjustment determination under 35 U.S.C. 154(b) of 477 days.

**BACKGROUND**

On March 17, 2009, the application matured into U.S. Patent No. 7,504,009, with a revised patent term adjustment of 477 days. On May 11, 2009, patentees timely submitted this request for reconsideration of patent term adjustment within two months of the issue date of the patent. See 37 CFR 1.705(d).

Patentees request recalculation of the patent term adjustment based on the decision in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008). Patentees aver that the correct number of days of patent term adjustment is 600 days under the court's interpretation of the overlap provision as set forth in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008). Patentees contend that pursuant to Wyeth, periods of

delay under 35 U.S.C. 154(b)(1)(A) and 35 U.S.C. 154(b)(1)(B) overlap only if they occur on the same calendar day(s). Patentees state that the total period of Office delay is the sum of 123 days of delay under 37 CFR 1.702(b) ("Three Year Delay")<sup>1</sup> and 506 days of delay under 37 CFR 1.702(a) ("examination delay") to the extent that these periods of delay are not overlapping. Patentees contend no periods of delay attributable to grounds specified under 35 U.S.C. 154(b)(1)(A) and 35 U.S.C. 154(b)(1)(B) overlap. Therefore, patentees assert that they are entitled to the sum of 506 (503+3) days of examination delay plus 123 days of Three Years Delay minus 29 days of applicant delay, for a total patent term adjustment of 600 days.

### OPINION

Patentees' interpretation of the period of overlap has been considered, but has been found inconsistent with the Office's interpretation of the overlap provision, 35 U.S.C. 154(b)(2)(A). 35 U.S.C. 154(b)(2)(A) limits the adjustment of patent term, as follows:

to the extent that the periods of delay attributable to grounds specified in paragraph (1) overlap, the period of any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed.

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<sup>1</sup> Pursuant to 35 U.S.C. 154(b)(1)(B), 37 CFR 1.702(b) provides, in pertinent part, that:

Failure to issue a patent within three years of the actual filing date of the application. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b)[.]

As explained in *Explanation of 37 CFR 1.703(f)*<sup>2</sup> and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A), 69 Fed. Reg. 34283 (June 21, 2004), the Office interprets 35 U.S.C. 154(b)(2)(A) as permitting either patent term adjustment under 35 U.S.C. 154(b)(1)(A)(i)-(iv), or patent term adjustment under 35 U.S.C. 154(b)(1)(B), but not as permitting patent term adjustment under both 35 U.S.C. 154(b)(1)(A)(i)-(iv) and 154(b)(1)(B). Accordingly, the Office implements the overlap provision as follows:

If an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See *Changes to Implement Patent Term Adjustment Under Twenty Year Term; Final Rule*, 65 Fed. Reg. 54366 (Sept. 18, 2000). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004), 1282 Off. Gaz. Pat. Office 100 (May 18, 2004). See also *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, 69 Fed. Reg. 34283 (June 21, 2004).

Further, as stated in the *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, the Office has consistently taken the

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<sup>2</sup> Likewise, 37 CFR 1.703(f) provides that:

To the extent that periods of delay attributable to the grounds specified in § 1.702 overlap, the period of adjustment granted under this section shall not exceed the actual number of days the issuance of the patent was delayed.

position that if an application is entitled to an adjustment under the three-year pendency provision of 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending before the Office (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A).

This interpretation is consistent with the statute. Taken together the statute and rule provide that to the extent that periods of delay attributable to grounds specified in 35 U.S.C. 154(b)(1) and in corresponding 37 CFR 1.702 overlap, the period of adjustment granted shall not exceed the actual number of days the issuance of the patent was delayed.

It is noted, however, that delays resulting in the Office's failure to meet the time frames specified in 35 U.S.C. 154(b)(1)(A) (the "fourteen-four-four-four" provisions) are not always overlapping with a delay resulting in the Office's failure to issue a patent within the three-year time frame specified in 35 U.S.C. 154(b)(1)(B) because not all application pendency time is counted toward this three-year period. See 35 U.S.C. 154(b)(1)(B)(i)-(iii).

In this instance, all application pendency time is not counted toward the three-year period. A request for continued examination was filed on September 4, 2008. The period subsequent to the filing of the RCE is not included in the three-year time frame specified in 35 U.S.C. 154(b)(1)(B). See 35 U.S.C. 154(b)(1)(B)(i). Thus, the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A) is the period from May 4, 2005 to September 4, 2008. Thus, only the 503 days<sup>3</sup> of patent term adjustment accorded prior to the filing of the RCE pursuant to 37 CFR 1.702(a)(1)<sup>4</sup> are considered in determining overlap.

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<sup>3</sup> A nonfinal Office action was mailed on November 19, 2007, 14 months and 503 days after the date on which the requirements under 35 U.S.C. 371 were fulfilled on July 4, 2006.

<sup>4</sup> 37 CFR 1.702, provides grounds for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999 (original applications, other than designs, filed on or after May 29, 2000).



The 3 days<sup>5</sup> for Office delay under 37 CFR 1.702(a)(4),<sup>6</sup> occurring subsequent to the filing of the RCE is not considered. The 123 days<sup>7</sup> attributed to Office delay pursuant to 37 CFR 1.702(b) is determined to overlap with the 503 days attributed to Office delay pursuant to 1.702(a)(1). 506 (503 + 3) days is the actual number of days issuance of the patent was delayed. Accordingly, at issuance, the Office properly entered no additional period of adjustment, having considered the 123 days of Office delay under the three-year pendency provision.

In view thereof, the Office affirms the revised determination of patent term adjustment at the time of the issuance of the patent is 477 days (506 (503 + 3) days of Office delay - 29 days of applicant delay).

- 
- (a) Failure to take certain actions within specified time frames. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:
- (1) Mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 in an international application[.]

<sup>5</sup> The Office issued the patent on March 17, 2009, 4 months and 3 days after the payment of the issue fee on November 14, 2008.

<sup>6</sup> 37 CFR 1.702, provides grounds for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999 (original applications, other than designs, filed on or after May 29, 2000).

- (a) Failure to take certain actions within specified time frames. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:
- ...

- (4) Issue a patent not later than four months after the date on which the issue fee was paid under 35 U.S.C. 151 and all outstanding requirements were satisfied.

<sup>7</sup> Pursuant to 37 CFR 1.703(b)(1), the period of adjustment of 123 days is calculated as the number of days in the period beginning on the day after the date that is three years after the date on which the national stage commenced under 35 U.S.C. 371(b) or (f), May 5, 2008, and ending on the filing date of the RCE, September 4, 2008.

The Office acknowledges the previous submission of the \$200.00 fee set forth in 37 CFR 1.18(e) on November 14, 2008. No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

*Christina Tartera Donnell*

Christina Tartera Donnell  
Senior Petitions Attorney  
Office of Petitions